

TESTIMONY

OF

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ON BEHALF OF THE
NATIONAL AUTOMOBILE DEALERS ASSOCIATION

BEFORE THE
TELECOMMUNICATIONS, TRADE AND CONSUMER PROTECTION
SUBCOMMITTEE

OF THE

COMMITTEE ON COMMERCE
U.S. HOUSE OF REPRESENTATIVES

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AIR BAG DEACTIVATION - NHTSA RULEMAKING

My name is Ramsay Gillman, and I have been a new car dealer in Texas since 1967. I am President of Gillman Companies in Houston as well as President of the National Automobile Dealers Association (NADA). NADA represents 20,000 franchised auto and truck dealerships involved in the retail sale, service and repair of new and used motor vehicles, both domestic and import.

In January, the National Highway Traffic Safety Administration (NHTSA) proposed allowing vehicle owners to have their air bags deactivated by automobile dealers and repair businesses without petitioning NHTSA. This proposal allows vehicle owners to have their air bags deactivated for any reason. NADA believes the NHTSA proposal on deactivation as currently written is inappropriate.

Deactivation Should be Limited

The most harmful aspect of the NHTSA deactivation proposal as structured is that it allows any vehicle owner to have their air bag deactivated. The real problem is that the effectiveness of an air bag is dependent on proper driver belting and positioning. NHTSA's "fix" does not directly address this problem. If NHTSA adopts a broad deactivation policy I can guarantee you that customers will be walking into dealerships to have their air bags disconnected regardless of whether they are risk. By allowing deactivation on demand, the critical "life and death" decision of deactivation is oversimplified and trivialized.

NHTSA currently reviews deactivation requests on a case-by-case basis. This serves as a screening mechanism and an indispensable “check” on unnecessary attempts to deactivate a proven safety device. NHTSA’s proposal would do away with this process by shifting to dealers and repair facilities the burden of determining when deactivations are appropriate. This will create an enormous problem and burden on dealers, especially in light of the large number of deactivation requests expected.

In a recent NADA survey, approximately 1400 dealers (out of 23,000) indicated that collectively, 21,000 consumers have approached them to have their air bags deactivated. If there were this many requests to only 1400 dealers before it became legal to deactivate, we can anticipate hundreds of thousands of requests if deactivation is allowed for any reason.

It is important to understand that deactivation is much more complicated and technical than it appears. Occupant protection systems are highly integrated and deactivating an air bag may create a greater risk than if the car never had an air bag in the first place. If the bag is deactivated, there may be a need to adjust the belt mechanism likewise. I don’t believe dealers are equipped to make this adjustment without assistance and parts from manufacturers. NHTSA’s proposal will ultimately mean trading one problem for a greater and more complex problem.

Dealers have a first-hand knowledge of the benefits of air bags. We see customers come in to have their cars repaired or to purchase new vehicles following accidents where air bags have

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The NHTSA deactivation proposal as structured is too broad since it allows any vehicle owner to have their air bag deactivated. This fails to recognize the crux of the problem, that motor vehicle safety depends on proper driver positioning and belting. While deactivation is necessary in only rare cases, many consumers, unduly alarmed about air bags, may deactivate their air bags under the false assumption that deactivation will make them safer. Consequently, NHTSA has taken a limited and restricted problem and attempted to address it with a broad and unrestricted deactivation proposal that will increase safety risks.

In addition to NHTSA's unnecessarily lenient deactivation policy, it is important to note that occupant protection systems are integrated systems. Therefore, deactivation may be less protective since air bags are designed to act in concert with other safety features such as steering columns and seat belt pretensioners and limiters. Since deactivation is much more complicated and technical than it appears, Congress should assure that NHTSA's deactivation policy addresses the following:

1. Deactivation Should Be Limited

- **NHTSA must continue to carefully conduct case-by-case deactivation reviews** limiting deactivation to serious, high risk medical situations or if it can be shown that children below a designated size/weight must sit in an air bag equipped passenger seat.

2. Performance Standard

Due to the variety and complexity of air bag systems, the NHTSA rulemaking should be a performance standard by setting minimum technical parameters to guide manufacturers in the development of "official" deactivation procedures and parts if necessary. The deactivation performance standard must require that automobile manufacturers:

- Provide dealers with official and detailed deactivation information, kits or training procedures. **The deactivation rule's effective date must allow adequate time for manufacturers to develop these procedures and make any new parts readily available. An "immediate effective date" would be inappropriate and mislead the public.**

- Address important safety disablement concerns to protect technicians, including how to handle air bags that are removed. Some of these concerns may have already been addressed in the context of emergency responders and vehicle dismantlers.
- Ensure that single bag deactivations not impact the performance of second bags (if any) and that check lights remain fully functional for second bags.
- Ensure that, where applicable, belt pretensioner and limiter performance is maintained since air bags are an integrated safety system. Belts systems designed with pretensioners or limiters may provide less safety protection if the air bag is deactivated.
- Require that deactivations result in detectable system diagnostics “fault codes” to allow easy assessment of whether or not vehicles have functioning air bags.
- Limit deactivation options to those allowing for easy reactivation based on manufacturer-issued procedures.

3. NHTSA Information and Authorization

- NHTSA must continue to be responsible for providing deactivation information to the public and issuing formal government authorizations to those individuals who meet appropriate criteria. The government should not put dealers and repair shops in the position of determining the appropriateness of deactivation or verifying a customer’s qualifications. Without a formal NHTSA process, deactivations are not likely to be conducted for obvious liability reasons.
- A separate toll-free NHTSA number should be established to respond to questions and send out deactivation information. Upon request, NHTSA would send out a package containing both written information and a video graphically demonstrating the benefits of air bags.
- Information sent to consumers should explain the systematic nature of occupant protection features and belts in vehicles with deactivated bags may offer a lesser degree of protection than belts in vehicles with air bags.
- The NHTSA information package would contain an application form that the consumer, with proof of vehicle ownership, could send back to NHTSA for review and approval. NHTSA, in turn, would issue authorization letters identifying the approved individual’s name and address, relevant vehicle specific information and which air bag(s) may be disconnected.
- Authorization letters sent by NHTSA would stress that dealers and repair facilities are allowed but not required to deactivate air bags.

- NHTSA should also issue and explain the purpose of the waiver/hold harmless/indemnification form and the importance and economic benefit (i.e., increased vehicle value) of having air bags reconnected. All co-owners and co-lessees must sign this form .
- Dealers and repair business would notify NHTSA when deactivations are complete and when reactivations are done, perhaps through the use of an addressed postcard included with the manufacturer's "official" deactivation information or kit.
- Lessees approved for deactivation of bags should be required to obtain lessor approval.
- Procedure established to require verification of ownership prior to deactivation.
- Individuals approved for deactivation should be required to have air bags reactivated or to notify transferees if and when air bags remain deactivated at the time of transfer.

4. Labeling and Record keeping

Labeling is necessary to give notice to vehicle operators and passengers and a government public record is important for subsequent owners and dealers who would otherwise be unaware of a deactivation.

- NHTSA should supply "permanent" deactivation labels with approval letters or manufacturers should be required to supply them with their deactivation procedures and/or kits to dealers
- NHTSA must keep a permanent public record of all deactivation approvals deleting entries only when air bags are reactivated or vehicles are scrapped.

5. Cutoff Switches

NHTSA's deactivation rulemaking fails to recognize that retrofit cutoff switches (on existing vehicles) and cutoff switches (on new vehicles) would provide consumers with the safest deactivation alternative to accommodate personal and family needs.

- The new vehicle cutoff switch rule should be immediately expanded to allow manufacturers the flexibility to offer air bag cutoff switches in any new vehicle.
- Deactivation should be broadly defined to include, if not promote, the retrofitting of cutoff switches.

Statutory Discretion

In addition to the above stated specific concerns, NADA suggests there is a real concern regarding NHTSA's statutory discretion to authorize widespread deactivation. The Motor Vehicle Safety Act's stated purpose is to "...reduce traffic accidents and deaths and injuries resulting from traffic accidents...."¹ The air bag requirements set out in NHTSA's Safety Standard No. 208 were ostensibly promulgated consistent with that purpose.² Generally, manufacturers, dealers, and motor vehicle repair businesses may not knowingly "make inoperative" safety devices installed in compliance with federal motor vehicle standards.³ NHTSA may prescribe a rule to exempt persons from the "make inoperative" prohibition, but only if it "...is consistent with motor vehicle safety and section 30101..."⁴

The proposed air bag deactivation scheme is not consistent with motor vehicle safety and will not reduce deaths and injuries from traffic accidents. This is because it would allow for (if not encourage) air bag deactivations on a wholesale basis, despite overwhelming evidence that air bags enhance driver and front seat passenger safety in all but an extremely limited number of circumstances. In its proposal, NHTSA seems to be abdicating its responsibility to determine when, if at all, it would be in the motoring public's best interest to disconnect their air bags. Therefore, the proposed deactivation rule falls outside of NHTSA's discretion to allow for exemptions from the Act's "make inoperative" prohibition.

¹49 U.S.C. §30101.

²49 CFR §571.208.

³49 U.S.C. §30122(b)

⁴49 U.S.C. §30122(c).